

The Russian Constitutional Court has confirmed that property losses must not be taxed as imputed income

FAO individual taxpayers, as well as tax managers of family offices

Pepeliaev Group advises that, in its first Resolution handed down in 2026, the Russian Constitutional Court instructed that uncertainties in the payment of personal income tax be eliminated when property is exchanged¹. However, the Court's position is noticeably broader: property losses cannot be taxed as imputed income.

In the case that was the reason for the Constitutional Court to consider the issue, two individuals had exchanged agricultural land plots. For the applicant, the cadastral value of the plot being disposed of was several times greater than that of the plot being acquired. The parties, however, recognised both plots in the contract as equivalent, valuing one several times below and the other approximately 20% above its cadastral value.

In a civil law relationship, the rules for a sale and purchase apply to an exchange: each party is recognised as the seller of the goods, which it undertakes to transfer, and as the purchaser of the goods which it undertakes to accept in an exchange².

Judicial practice has developed an approach according to which the rules for a sale apply to an exchange, including for tax purposes. The property disposed of by each party is regarded as sold at the contract price. The party's expenses for the acquisition of the property being sold are deducted from its income³. The value of the property received may be booked for tax purposes when it is sold.

¹ Resolution No. 1-P of the Russian Constitutional Court dated 15 January 2026 (the "Russian Constitutional Court's Resolution", the "Resolution").

² Article 567(2) of the Russian Civil Code.

³ The Overview of judicial practice in cases relating to how Chapter 23 of the Russian Tax Code is applied (approved by the Presidium of the Russian Supreme Court's Resolution dated 21 October 2015), paragraph 9.

Comment

For example, individuals exchanged property worth RUB 1 million, having previously spent RUB 200,000 each on purchasing it. Then each of them must book income of RUB 1 million, can deduct RUB 200,000, and tax is levied on the difference of RUB 800,000.

The acquisition cost of the property received in an exchange, RUB 1 million, may be taken into account when it is sold.

A sale effected through an exchange may be exempt from tax on general grounds, for example based on the period of ownership. However, for certain types of property, such exemptions do not apply.

When real estate is sold at a price below its cadastral value, the Russian Tax Code provides for imputed taxation, with the income being deemed to amount to no less than 0.7 times the cadastral value⁴. From 2025, regions may reduce or abolish the 30% “discount”⁵, although this possibility did not affect the specific case (from 2021).

By equating an exchange to a sale for the purposes of the above rule, which taxes imputed income, the tax authority treated the applicant as having received income not in the amount of the value of the received property, but based on the cadastral value of the plot being disposed of.

The Constitutional Court indicated that the applicant’s rights had been restricted unacceptably.

The applicable provisions are not sufficiently clear: in other situations the legislature directly mentions an exchange alongside a sale and purchase, but in this situation did not.

However, the Court did not limit itself to referring to ambiguity.

The Constitutional Court stated that applying the rules on a sale to an exchange does not mean that such relations are identical, but merely simplifies how violated rights are protected in situations that are similar for a sale and an exchange (for example, where the party that transferred the property breached requirements as to its quality). An exchange cannot be equated to a sale in full; the specific nature of its content must be taken into account.

In addition, the Constitutional Court drew attention to the previous position of the Russian Supreme Court, according to which if the exchanged property has the

⁴ Article 214.10(2) of the Russian Tax Code.

⁵ Article 214.10(9) of the Russian Tax Code.

same market value, no income arises for the parties and no tax obligation arises⁶. This approach applied when, among other things, the acquisition cost of the exchanged property was lower than its value at the time of the exchange. The approach of the Supreme Court was changed without the Russian Tax Code being amended, which indicates that the law is unclear.

Examining the difference in the cadastral values of the items being exchanged, the Constitutional Court considered it necessary to distinguish between their equal value and their equal significance.

In the exchange, the item being acquired may cost less than the one being disposed of. But it cannot be presumed that the difference is the income received and concealed from taxation. An item being acquired that is valued lower than the one being disposed of may meet the person's needs and cannot be reduced to the property value of the exchanged items. The Constitutional Court cited examples unrelated to the subject matter of the dispute (collecting, or the return of a family heirloom), which indicates how broad the adopted approach is.

Income may arise for a person who, in the exchange, received an item valued **higher** than the one being disposed of, and not lower, as in the applicant's case.

The Constitutional Court stated that imputed tax burden cannot be imposed on the party that conceded in value terms in an exchange without assessing the reasons for its actions, since otherwise this would mean property losses, instead of income, being taxed.

However, even having received in the exchange an item valued **higher** than the one being disposed of, it is possible to prove that, owing to the reasons mentioned above unrelated to their property value, the other party conceded in value without seeking to enrich the party that managed to obtain the benefit. Then the exchanged items will be unequal in value but will remain equal in significance, and the benefit will not constitute taxable income of the party that received it.

The approach applies to an exchange for purposes unrelated to business activity.

Pepeliaev Group's comment

In the specific case, the exchanged items are homogeneous: they are agricultural lands. For such transactions, there are grounds to consider that the position of the parties did not change to an extent characteristic of income being received. A similar logic underlies the exemption from tax of income received when housing is sold and other housing purchased of a larger area for a family with children⁷.

⁶ The Russian Supreme Court's Overview of legislation and judicial practice for the third quarter of 2009 (approved by the Presidium of the Russian Supreme Court's Resolution dated 25 November 2009), answer to question No. 1.

⁷ Article 217.1(2.1) of the Russian Tax Code.

An exchange of homogeneous items should, until the legislature decides, be treated with caution. The text of the Constitutional Court's Resolution allows one to consider that, in the absence of a difference in value, no one has income, and it is unimportant whether the exchanged items are homogenous. However, it is possible that the tax authorities, and subsequently the legislature, will take a stricter approach, especially if there are evident abuses of the Constitutional Court's position.

For taxpayers, the approach of the Supreme Court in the late 2000s appears attractive: if the market value of the exchanged items is equal, no one has received income, since the wealth of the parties has not increased. Here it is not important what was exchanged (land for land, a country house for a car, and so on); it is only important how much it is worth on the day the exchange is made.

However, the Constitutional Court did not directly prescribe reinstating this approach and from now on following it alone.

The approach of the Supreme Court in 2015 reproduces in relationships between individuals the understanding of an exchange that is customary for business relationships and financial accounting: an exchange is two reciprocal sales which the parties have simplified in order to avoid reciprocal payments or formalising a set-off of monetary claims.

We believe that in the field of business such an approach will remain.

However, the Constitutional Court reproduced in its Resolution the position previously devised that taxation of property losses under the guise of imputed income must not be allowed when such income in fact was not, and could not have been, received.

This position is reflected in the Constitutional Court's Resolution of last year regarding the tax consequences of property being transferred to a member withdrawing from a business company⁸. We believe that its repetition should influence legislative decisions developed in pursuance of last year's Resolution. In particular, it cannot be regarded as permissible for a business company, in the situations mentioned, to have income imputed in the amount of the value of the property transferred to the member, as if the company had sold this property to the member.

As regards the transaction price deviating from the cadastral or market level, it is likely that the legislature will reproduce the Constitutional Court's approach: in an exchange, income will be imputed to the fortunate party (upon a sale, as before, for the seller).

⁸ The Russian Constitutional Court's Resolution No. 2-P dated 21 January 2025.

However, it is unclear whether the legislature will retain the additional condition for imputing tax to the fortunate party to the exchange, which is a lack of reasonable grounds for the deviation.

Proving reasonable grounds by virtue of which a price deviation has arisen may cause practical difficulties. In an exchange, the issue of what benefit there is of such deviation arises for the party that has acquired property worth more than that transferred. The reason for the price concession can be explained only by the other party. However, in the absence of tax for that party, it has no interest in disclosing this reason, and there is no lawful way to compel the party to disclose.

From a practical point of view, the parties may be advised to record such reasons, if they are able to be disclosed, in written agreements.

What to think about, what to do

When planning an exchange of property of individuals, we advise taking into account the Constitutional Court's Resolution and assessing the degree of risk of a refusal to apply it, in particular where the items being exchanged are homogeneous.

Help from your adviser

We are ready to advise you on any issues concerning the taxation of personal income and on the tax risks of equating property losses to income in conditions where legislation is unclear.

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